

PATENT COOPERATION TREATY

PCT

INTERNATIONAL PRELIMINARY EXAMINATION REPORT

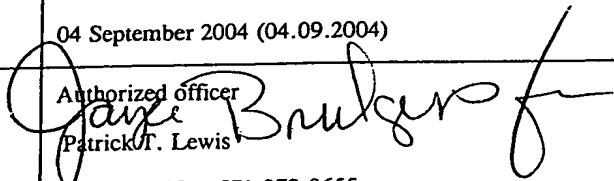
(PCT Article 36 and Rule 70)

Applicant's or agent's file reference E0377/7012WO	FOR FURTHER ACTION See Notification of Transmittal of International Preliminary Examination Report (Form PCT/IPEA/416)	
International application No. PCT/US01/47251	International filing date (day/month/year) 05 December 2001 (05.12.2001)	Priority date (day/month/year) 05 December 2000 (05.12.2000)
International Patent Classification (IPC) or national classification and IPC IPC(7): A61K 31/7008, 31/702; C07H 5/06; A61P 37/02 and US Cl.: 536/123.1		
Applicant THE BRIGHAM AND WOMEN'S HOSPITAL, INC.		

1. This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.
2. This REPORT consists of a total of 4 sheets, including this cover sheet.
- ☐ This report is also accompanied by ANNEXES, i.e., sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT).

These annexes consist of a total of ___ sheets.

3. This report contains indications relating to the following items:
- I ☒ Basis of the report
 - II ☐ Priority
 - III ☒ Non-establishment of report with regard to novelty, inventive step and industrial applicability
 - IV ☐ Lack of unity of invention
 - V ☒ Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
 - VI ☐ Certain documents cited
 - VII ☐ Certain defects in the international application
 - VIII ☐ Certain observations on the international application

Date of submission of the demand 24 June 2002 (24.06.2002)	Date of completion of this report 04 September 2004 (04.09.2004)
Name and mailing address of the IPEA/US Mail Stop PCT, Attn: IPEA/US Commissioner for Patents P.O. Box 1450 Alexandria, Virginia 22313-1450 Facsimile No. (703) 305-3230	Authorized officer  Patrick T. Lewis Telephone No. 571-272-0655

INTERNATIONAL PRELIMINARY EXAMINATION REPORT

International application No.

PCT/US01/47251

I. Basis of the report

1. With regard to the elements of the international application:*

☒ the international application as originally filed.

☒ the description:

pages 1-69 as originally filed

pages NONE, filed with the demand

pages NONE, filed with the letter of _____.

☒ the claims:

pages 70-80, as originally filed

pages NONE, as amended (together with any statement) under Article 19

pages NONE, filed with the demand

pages NONE, filed with the letter of _____.

☒ the drawings:

pages 1-6, as originally filed

pages NONE, filed with the demand

pages NONE, filed with the letter of _____.

☐ the sequence listing part of the description:

pages NONE, as originally filed

pages NONE, filed with the demand

pages NONE, filed with the letter of _____.

2. With regard to the language, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language _____ which is:

☐ the language of a translation furnished for the purposes of international search (under Rule 23.1(b)).

☐ the language of publication of the international application (under Rule 48.3(b)).

☐ the language of the translation furnished for the purposes of international preliminary examination (under Rules 55.2 and/or 55.3).

3. With regard to any nucleotide and/or amino acid sequence disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

☐ contained in the international application in printed form.

☐ filed together with the international application in computer readable form.

☐ furnished subsequently to this Authority in written form.

☐ furnished subsequently to this Authority in computer readable form.

☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.

☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. ☐ The amendments have resulted in the cancellation of:

☐ the description, pages NONE

☐ the claims, Nos. NONE

☐ the drawings, sheets/fig NONE

5. ☐ This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).**

* Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report since they do not contain amendments (Rules 70.16 and 70.17).

** Any replacement sheet containing such amendments must be referred to under item 1 and annexed to this report.

INTERNATIONAL PRELIMINARY EXAMINATION REPORT

International application No.

PCT/US01/47251

III. Non-establishment of opinion with regard to novelty, inventive step and industrial applicability

1. The question whether the claimed invention appears to be novel, to involve an inventive step (to be non-obvious), or to be industrially applicable have not been and will not be examined in respect of:

☐ the entire international application,

☒ claims Nos. 22-39 and 44-61

because:

☐ the said international application, or the said claim Nos. _____ relate to the following subject matter which does not require international preliminary examination (*specify*):

☒ the description, claims or drawings (*indicate particular elements below*) or said claims Nos. 22-39 are so unclear that no meaningful opinion could be formed (*specify*):

Present claims 22-39 relate to a compound defined by reference to the following parameter(s):
3D conformation in solution and geometric-functional features of the same. The use of these parameters in the present context is considered to lead to a lack of clarity within the meaning of Article 6 PCT. It is impossible to compare the parameters the applicant has chosen to employ with what is set out in the prior art. The lack of clarity is such as to render a meaningful complete search impossible. Consequently, the search has been restricted to the polymers disclosed in claims 1-21 in combination with the description, in particular bacterial polysaccharides.

The applicant's attention is drawn to the fact that claims, or parts of claims, relating to inventions in respect of which no international search report has been established need not be the subject of an international preliminary examination (Rule 66.1(e) PCT). The applicant is advised that the EPO policy when acting as an International Preliminary Examining Authority is normally not to carry out a preliminary examination on matter which has not been searched. This is the case irrespective of whether or not the claims are amended following receipt of the search report or during any Chapter II procedure.

☐ the claims, or said claims Nos. _____ are so inadequately supported by the description that no meaningful opinion could be formed.

☒ no international search report has been established for said claims Nos. 44-61

2. A meaningful international preliminary examination cannot be carried out due to the failure of the nucleotide and/or amino acid sequence listing to comply with the standard provided for in Annex C of the Administrative Instructions:

☐ the written form has not been furnished or does not comply with the standard.

☐ the computer readable form has not been furnished or does not comply with the standard.

INTERNATIONAL PRELIMINARY EXAMINATION REPORT

International application No.
PCT/US01/47251

V. Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. STATEMENT

Novelty (N)

Claims 18,20,21 and 41-43 YES

Claims 1-17, 19, 40 NO

Inventive Step (IS)

Claims 18, 20-21, 41-43 YES

Claims 1-17, 19, 40 NO

Industrial Applicability (IA)

Claims 1-21, 40-43 YES

Claims NONE NO

2. CITATIONS AND EXPLANATIONS

Claims 1-17, 19, and 40 lack novelty under PCT Article 33(2) as being anticipated by US 5,700,787.

Claims 18, 20-21, and 41-43 meet the criteria set out in PCT Article 33(2)-(3), because the prior art does not teach or fairly suggest the immunomodulatory polysaccharide PS A2.

Claims 1-21 and 40-43 meet the criteria set out in PCT Article 33(4), and thus have industrial applicability because the subject matter claimed can be made or used in industry.